

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

EARL LEWIS ANDERSON, JR., #L1784

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:05cv1KS-JMR

RON KING, et al.

DEFENDANTS

ORDER

Upon consideration of the complaint filed pursuant to 42 U.S.C. § 1983 as well as the amended complaint and responses submitted by the plaintiff in the above entitled action, the court makes the following findings.¹ The named defendants are Ron King, Larry C. Hardy, L. Beastley, K. Beastley, D. West, D. Gray, Bobby King, Dr. Bradley, Dr. Jerry Welch, Dr. K. Quin, Nurse M. Lewis, Dr. Turner, James Johnson, James Brewer, T. Seabrook, C. Pierce, Deputy Warren Hancock, Christopher Epps, Emmit Sparkman, Glenn Spann, Lynda Powell, Dr. Blackston, Shermandale Wiley, Case Manager Florence Jones, Case Manager E. Goings, Case Manager Berry, Case Manager R. Lewis, Case Manager U. Lewis, Officer Urbank, Langley, T. Morris, D. Hollinghead, H. Graves, R. Denmark, W. Madden, M. Turner, M. Davis, T. Barnes, T. Carter, R. Bonner, D. Kidd, I. Turner, B. Bivens, B. Everett, T. Rankin, T. Dailey, D. Papp, L. Merrit, Sarah Davis, Eddie Wolfe, C. Hood, Vickey Chapman, James Davis, M. Bailey, M. Ezell, L. Steward, William Cuddley, H. Hayes, Chaplin Jerry Rice, Lt. Henderson, Lt. West, Lt. Sim, Officer Butler, Captain Guess, Lt. K. Stanley, Captain Lewis, D. Revette, Officer Brewer, Nurse Henry Gagnon, Inmate Travis White and Inmate Tony White.

¹In his response [document #28] filed December 27, 2005, the plaintiff states that he is not seeking permission to proceed to the United States Court of Appeals for the Fifth Circuit.

In order to maintain an action pursuant to § 1983, the plaintiff must allege that a person acting under color of state law deprived him of a right secured by the Constitution or other law of the United States. West v. Atkins, 487 U.S. 42, 48 (1988); Daniel v. Ferguson, 839 F.2d 1124 (5th Cir. 1988). The plaintiff has failed to assert any allegations against defendants D. Gray, Glenn Spann, U. Lewis, I. Turner and Jerry Rice which rise to a level of constitutional deprivation. Even though this Court must liberally construe the pro se litigant's pleadings, this does not allow the Court to consider unpled facts. See McFadden v. Lucas, 713 F.2d 143, 147 n.4 (5th Cir. 1983) (citing Slotnick v. Staviskey, 560 F.2d 31, 33 (1st Cir. 1977)). Therefore, the Court finds that the plaintiff cannot maintain an action pursuant to 42 U.S.C. § 1983 against defendants D. Gray, Glenn Spann, U. Lewis, I. Turner and Jerry Rice.

IT IS THEREFORE ORDERED

1. That the clerk verify that the following are the named defendants:

Ron King, Larry C. Hardy, L. Beastley, K. Beastley, D. West, D. Gray, Bobby King, Dr. Bradley, Dr. Jerry Welch, Dr. K. Quin, Nurse M. Lewis, Dr. Turner, James Johnson, James Brewer, T. Seabrook, C. Pierce, Deputy Warren Hancock, Christopher Epps, Emmit Sparkman, Glenn Spann, Lynda Powell, Dr. Blackston, Shermandale Wiley, Case Manager Florence Jones, Case Manager E. Goings, Case Manager Berry, Case Manager R. Lewis, Case Manager U. Lewis, Officer Urbank, Langley, T. Morris, D. Hollinghead, H. Graves, R. Denmark, W. Madden, M. Turner, M. Davis, T. Barnes, T. Carter, R. Bonner, D. Kidd, I. Turner, B. Bivens, B. Everett, T. Rankin, T. Dailey, D. Papp, L. Merrit, Sarah Davis, Eddie Wolfe, C. Hood, Vickie Chapman, James Davis, M. Bailey, M. Ezell, L. Steward, William Cuddley, H. Hayes, Jerry Rice, Lt. Henderson,

Lt. West, Lt. Sim, Officer Butler, Captain Guess, Lt. K. Stanley, Captain Lewis, D. Revette, Officer Brewer, Nurse Henry Gagnon, Inmate Travis White and Inmate Tony.

The Clerk is further directed to correct the docket to reflect the above referenced are the named defendants in this civil action.

2. That D. Gray, Glenn Spann, U. Lewis, I. Turner, and Chaplin Jerry Rice be dismissed without prejudice as defendants.

3. That the plaintiff in his response [document #28] has voluntarily dismissed Shermandale Wiley as a defendant.

4. That the plaintiff within 20 days of the date of this order shall provide this court with the civil action number of every civil action or appeal which the plaintiff has had dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted. Plaintiff shall also provide the name of the court and name(s) of defendant(s) in each civil action identified.

5. That the United States District Clerk is hereby directed to issue summons to the defendants,

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Larry C. Hardy
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Jackson, MS 39202

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Officer K. Beastley
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Captain D. West
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Bobby King
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James Brewer

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Captain Guess
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Officer Everett
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Officer Langley
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Captain T. Morris
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D. Hollinghead
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H. Graves
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Officer R. Denmark
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Officer M. Davis
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R. Bonner
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William Cuddley
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Lt. K. Stanley
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Captain Lewis

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Officer D. Revette
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T. Barnes
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Nurse Henry Gagnon
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requiring a response to the complaints. The Clerk is directed to attach a copy of this order to a copy of the order [document #9], a copy of the amended complaint [document #11], a copy of the order [document #12], a copy of the second amended complaint [document #13], a copy of the amended complaint [document #14], a copy of the order [document #17], a copy of the response [document #18], a copy of the order [document #23], a copy of the response [document #28] to each complaint [document #1] that will be served on the named defendants. The United States Marshal shall serve the same pursuant to 28 U.S.C. § 1915(d).²

The plaintiff is advised that a summons will not be ordered to be issued for inmate defendants Travis White and Tony White at this time. Once the plaintiff has determined the

²By order [document #10] of this court entered on March 1, 2005, the plaintiff has been granted in forma pauperis status.

proper inmate number and address of each of these defendants, he must file a motion with this court requesting that process be ordered to issue for these defendants. This motion must contain the proper inmate number of these inmate defendants as well as their addresses.

6. That the defendant(s) file his or her answer or other responsive pleading in this cause in accordance with the *Federal Rules of Civil Procedure* and the Local Rules of this Court.

7. That subpoenas shall not be issued except by order of the Court. The United States District Clerk shall not issue subpoenas upon request of the pro se litigant, but shall instead forward the request to the Magistrate Judge assigned to this cause for review. The plaintiff shall submit all request for the issuance of subpoenas to the Magistrate Judge's office for review.

8. That *all discovery is to be completed 90 days from the time issue is joined by the filing of an answer. All dispositive motions shall be filed 120 days from the time issue is joined by the filing of an answer.*

9. That *the counsel for the defendants shall submit a Scheduling Order in accordance with the dates set out above for completing discovery and filing all dispositive motions within 15 days from the date of the Answer.*

10. That as provided in 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure, this Court may designate and assign a magistrate judge to hear a prisoner petition challenging the conditions of confinement. This Court hereby refers this cause to **Chief Magistrate Judge John M. Roper** for all further proceedings provided for by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure to include conducting hearings and submitting to the district judge assigned to this cause proposed findings of fact

and recommendations for the disposition of this cause.

The plaintiff should understand that this order allowing process to issue against the above named defendants does not reflect any opinion of this Court that the claims contained in the complaint will or will not be determined to be meritorious.

It is the plaintiff's responsibility to prosecute this case. Failure to advise this Court of a change of address or failure to comply with any order of this Court will be deemed as a purposeful delay and contumacious act by the plaintiff and may result in the dismissal of this case.

SO ORDERED, this the 27th day of January, 2006.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE